THE HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.24215 of 2007

ORDER :

This Court issued Notice Before Admission on 15-11-2007.

2. The Writ Petition is filed praying for a Writ of *Mandamus* declaring the action of respondent in not receiving the application seeking correction of date of birth as 14-08-1986 instead of 14-09-1986 as entered in the petitioner's passport bearing No. AP 3784937 and for renewal of the same and further action of the respondent in directing him to obtain a Court order to correct the date of birth is arbitrary, illegal and against to all cannons of justice, besides the instructions issued by the Ministry of External Affairs in its circular and consequently direct the respondent to make the correction of date of birth as 14-08-1986 instead of 14-09-1986 in the petitioner's passport bearing No. A 3784937 and pass such other orders.

3. It is stated that the petitioner was born on 14-08-1986 and during his childhood his mother had taken the passport in his name as his father had been away from Hyderabad due to his employment as long back as in the year 1997. Since his mother had taken the assistance of a broker, the broker might have filled the application and petitioner had been granted with the passport bearing No. A 3784937 for a period of 10 years valid from 17-09-1997 to 16-09-2007. It is further stated that when petitioner sought to present an application seeking renewal of the passport after fulfilling the requisite conditions, he could

notice that the date of birth in the passport has crept up a mistake with respect to the month and he immediately had taken steps for rectification of the said mistake crept in and when he sought to file an application, the respondent had refused to receive the application seeking correction of his date of birth, as per the date of birth entered in his school leaving certificate as well for renewal and the respondent not even accepted his application and has directed him to obtain a declaratory decree from the competent civil Court or an order from this Court, or else they would not receive even the application. It is further stated that the respondent had shown him a circular dated 18-04-2001 issued by Ministry of External Affairs, Government of India, which reads as under:

> (a) Where an applicant is seeking rectification/correction of a mistake in the entry on date of birth/place of birth in the passport, PIA may after verifying/satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.
>
> (b) Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to issue any correction or amendment. PIA may affect the necessary amendment in the passport without insisting on a Court Order. As per the provisions of Section 21 of the general clauses Act 1997, a competent authority issuing a Certificate could also make necessary amendments to the same.
>
> (c) Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e., School/educational

> authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e., municipal authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent Court of jurisdiction, certifying the valid date of birth/place of birth.

4. Further it is stated that in similar circumstances this Court had been pleased to dispose of the Writ Petition No.18325 of 2006 dated 19-12-2006 observing as follows:

"In case on hand, the correction sought to be made are supported by four authenticate certificates issued by the competent authorities, which are as under:

a) Municipal Birth Certificate dated 15-01-1986;
b) School Leaving Certificate dated 28-02-1990, issued by Girton High School, Grant Road, Bombay.
c) VII class Certificate dated 05-06-1998; and
d) 10th Class Certificate dated 30-04-2001.

The specific plea of the petitioner that the initial entries in his passport were not supported by documents issued by a competent authority was neither contradicted by the respondent, nor any other material is placed before this Court to show that the documents produced by the petitioner were emanated from conflicting sources. Except observing that it is not a technical correction, even in the impugned order nothing has been mentioned that the supportive documents produced by the petitioner cannot be relied upon since they emanated from different source.

Having regard to the facts and circumstances of the case, I am unable to hold that Clause (c) of the Circular dated 18-04-2001

is attracted warranting production of a declaratory decree from the Civil Court. The impugned order appears to have been passed mechanically without proper appreciation of the material produced.

Accordingly, the impugned order is set aside and the writ petition is allowed with a direction to the respondent to consider the application of the petitioner for fresh passport, without insisting on any declaratory decree from the civil court, on the basis of the supportive documents produced by the petitioner. Such exercise shall be completed as expeditiously as possible, preferably within a period of four weeks from the date of receipt of a copy of this order. No costs."

5. It is further stated that the respondent has to correct petitioner's date of birth by following the instructions as contained in circular dated 18-04-2001 and in accordance with the judgment in W.P.No.18325 of 2006 dated 19-12-2006. It is further stated that it is a rectification/correction of a mistake in the entry of his passport, in support of which he has filed the 10th class marks memo issued by the Board of Secondary Education. His request in the application falls within the purview of the instructions issued by the Ministry of External Affairs in circular dated 18-04-2001, in view of the above, the respondent bound to carry out the corrections. It is further stated that the said mistake crept in is the bona fide and had been inadvertent without any mala fide intention. If the respondent is not directed to receive the application for correction of the date of birth in the passport as per the school leaving certificate and the other supported documents enclosed to it and to renew his passport, he would suffer grave and irreparable loss and hardship as it may affect his future avenues. In such circumstances, the

writ petitioner approached this Court by filing the present writ petition praying for appropriate relief.

6. The Circular dt.18-4-2001 reads as hereunder:-

Ministry of External Affairs

(PV-I Section)

Circular

___/401/2/5/2001 *18th April, 2001*

As per the current practice, in case of change of date of birth/place of birth, the applicant is required to produce the original declaratory order from a First Class Judicial Magistrate. However in view of the recent Judgment given by the High Court of Judicature at Mumbai in CWP No.1072 of 2000 filed by Shri Jigar Harish Shah, the following clarifications are issued:

(d) Where an applicant is seeking rectification/correction of a mistake in the entry on date of birth/place of birth in the passport, PIA may after verifying/satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.

(e) Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to issue any correction or amendment. PIA may affect the necessary amendment in the passport without insisting on a Court Order. As per the provisions of Section 21 of the general clauses Act 1997, a competent authority issuing a Certificate could also make necessary amendments to the same.

(f)Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e., School/educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e., municipal authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil

order from a competent Court of jurisdiction, certifying the valid date of birth/place of birth.

Sd//
(Manju)
Under Secretary (PV-I)

All Passport Issuing Authorities

Copy for information to L&T Division, MEA

The learned Counsel placed strong reliance on the decision in ***ALI IMRAN v. REGIONAL PASSPORT OFFICER, SECUNDERABAD***[1] wherein the learned Judge of this Court at paras 3 and 4 observed as hereunder:-

> *"Be it noted that under provisions of the Passports Act, 1967, no power is vested in the Regional Passport Officer to correct entries in the passport. However, pursuant to the Judgment of the High Court of Bombay referred to hereinafter, it is now permissible for the Regional Passport Officer to accept applications for rectification/correction. Nonetheless, as per clause (c) above, if an entry had been made on the basis of a supportive document issued by one authority i.e., school or educational authority and subsequently the applicant requests for a change of the entry on the basis of the certificate issued by another authority the passport issuing authority is required to direct the applicant to obtain a proper declaration from the Civil Court.*
>
> *Having regard to the clarification issued by the Government of India, I directed the learned Standing Counsel for Central Government, Sri K.G.Krishna Murthy to produce a copy of the application made by the petitioner for passport in the year 1999. The application is produced before me today. A perusal of the application along with its enclosures reveal that the petitioner enclosed Secondary School Certificate bearing C019604 dated 10-6-1987 which shows his date of birth as 28-7-1992. Therefore, it cannot be*

said that an error has crept in the passport issued to the petitioner. As the petitioner is now placing reliance on the on the birth certificate issued by the Registrar of Births and Deaths, Municipal Corporation of Hyderabad, which shows his date of birth as 28-7-1975, his case does not fall within the guidelines/instructions issued by the Government of India. If the petitioner is so advised, he may have to approach the Civil Court or the authorities under the Education Act seeking necessary correction of date of birth in the Secondary School Certificate and then approach the passport issuing authority. The petitioner's application was rightly not accepted by the respondent."

In ***Mohd.Narsullah Khan v. Regional Passport Officer, Hyderabad***[2] the learned Judge observed at paras 4, 5, 6 and 7 as hereunder:-

*"In **Ali Imran v. Regional Passport Officer, Secunderabad (2003 (4) ALT 474 = 2003 (3) ALD 625,** I have considered the Circular dated 18-4-2001 issued by the Government of India in the Ministry of External Affairs pursuant to the Judgment of the High Court of Judicature at Bombay in Civil Writ Petition No.1072 of 2000. The instructions/clarifications issued in the said Circular read as under:*

(a) Where an applicant is seeking rectification/correction of a mistake in the entry on date of birth/place of birth in the passport, PIA may after verifying/satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.

(b) Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to issue any correction or amendment. PIA may affect the necessary amendment in the passport without insisting on a Court

Order. As per the provisions of Section 21 of the general clauses Act 1997, a competent authority issuing a Certificate could also make necessary amendments to the same.

(c) Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e., School/educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e., municipal authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent Court of jurisdiction, certifying the valid date of birth/place of birth.

In view of the above clarifications, I disposed of the said case observing as under:

Be it noted that under the provisions of the Passports Act, 1967, no power is vested in the Regional Passport Officer to correct entries in the passport. However, pursuant to the Judgment of the High Court of Bombay referred to hereinabove, it is now permissible for the Regional Passport Officer to accept applications for rectification/correction. Nonetheless, as per clause (c) above, if an entry had been made on the basis of a supportive document issued by one authority i.e., school or educational authority and subsequently the applicant requests for a change of the entry on the basis of the certificate issued by another authority the passport issuing authority is required to direct the applicant to obtain a proper declaration from the civil Court.

In this case, the petitioner has produced Secondary School Certificate to prove that his correct date of birth is 1-4-1976. Therefore, the claim of the petitioner is well supported and squarely falls in Clause (a) of the Circular dt.18-4-2001.

Following the Judgment of this Court in ***Ali Imran (referred above)*** *this Writ Petition is also disposed of directing the respondent to consider*

the application of the petitioner along with the Secondary School Certificate No.PC/01/0190544/2 PRIVATE, issued by the Secretary, Board of Secondary Education, Andhra Pradesh, Hyderabad, and to pass appropriate orders in the light of the observations made in the above Judgment. There shall be no order as to costs."

7. The specific stand taken by the petitioner is that in the Secondary School Certificate issued by the Board of Secondary Education, the petitioner's date of birth was correctly mentioned. In the light of the facts and circumstances and also the specific stand taken by the petitioner, the respondent is hereby directed to consider the case of the petitioner in relation to his change of date of birth in accordance with the Secondary School Certificate in the light of the Circular and also the views expressed by this Court in the decisions referred to supra, within a period of four weeks from the date of receipt of this order.

8. The Writ Petition is accordingly disposed of. No order as to costs.

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Justice P.S.Narayana

29th November, 2007

skmr

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.24215 of 2007

Dated: 29th November, 2007

BETWEEN:

M.Raghuvamshi, S/o M.Rajalingam,
aged about 21 years, Occ:Unemployee,
R/o MIG-II/220, 9th Phase,
KPHB Colony, Ranga Reddy District – 500 072
.. Petitioner

And

Regional Passport Officer,
Near Prashanth Theatre, Secunderabad
.. Respondent

[1] 2003 (3) ALD 625
[2] 2005(1) ALT 95